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ALEXANDER L. STEVAS,
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No. 82-708

IN THE

Supreme Court of the United States

October Term, 1982

SUMMA CORPORATION,

Petitioner,

vs.

STATE OF CALIFORNIA *ex rel.* STATE LANDS COMMISSION and CITY OF LOS ANGELES,

Respondents.

On Writ of Certiorari to the Supreme Court of the State of California.

OPPOSITION TO MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION AND MOTION TO STRIKE PORTIONS OF PROPOSED BRIEF AMICUS CURIAE OF CALIFORNIA LAND TITLE ASSOCIATION.

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OPPOSITION TO MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION AND MOTION TO STRIKE PORTIONS OF PROPOSED BRIEF AMICUS CURIAE OF CALIFORNIA LAND TITLE ASSOCIATION.

Respondent State of California *ex rel.* State Lands Commission respectfully requests that this Court deny the motion of Pacific Legal Foundation ("PLF") for leave to file a brief *amicus curiae* in this case. Further, while respondent State has withheld consent, should this Court grant the similar motion of the California Land Title Association ("CLTA"), respondent State requests that the portion of CLTA's proposed brief raising the issue of "taking without payment of just compensation" be stricken. These requests are made pursuant to Rules of the Supreme Court, Rules

21.1(a), 34.1(a) and 36.5 and the decisions of this Court holding that no brief on the merits may raise additional questions to those urged in the petition for certiorari.

Leave to File PLF's Brief *Amicus Curiae* Should Be Denied and a Portion of CLTA's Proposed Brief Stricken Because the Sole Issue to Which Each Is Devoted Is Not Raised by the Petition for Certiorari and Therefore Is Not Open for Decision by This Court.

The State requests that the motion of PLF to file its proposed *amicus* brief be denied and that, in the event the motion of CLTA to file its proposed *amicus* brief is not denied, that pages 20 to 29 be stricken, because both violate this Court's rule that the scope of such briefs must be confined to the questions to which the writ of certiorari was specifically limited.[1] *Knetsch v. United States*, 364 U.S. 361, 370 (1960).

In the instant case, PLF proposes to file an *amicus curiae* brief in which the sole issue addressed is whether the State court below "committed a taking of private property without payment of just compensation." (Summary of Argument, PLF Brief, p. 6.) Similarly, in its proposed *amicus* brief, CLTA devotes half of its argument to this same issue. (CLTA Brief, pp. 20-29.) But this issue was not raised in the petition for certiorari. Both PLF and CLTA acknowledge this fact, PLF stating that its non-issue "could receive inadequate attention from the parties" (PLF Brief, p. 2) and CLTA admitting that the issue has "not thus far been explored by the parties to this case." (CLTA Brief, p. 3.) Both are

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[1]The State has withheld consent to the filing of these amicus briefs since petitioner's counsel have made clear that they will not reconsider their decision to withhold consent to all such requests except that of CLTA.

understatements; the issue is not before this Court.

It is well settled that this Court confines itself to the grounds upon which the writ of certiorari was asked or granted, the review by this Court being no broader than that sought by petitioner. *Helis v. Ward*, 308 U.S. 365, 370 (1939); *Clark v. Williard*, 294 U.S. 211, 216 (1935); *Johnson v. Manhattan Ry. Co.*, 289 U.S. 479, 494 (1933).

In this case, petitioner did not raise the "taking" issue, understanding that the State court undertook to articulate the nature and quality of title always possessed by petitioner, not to cause a change or diminution of that title. Thus petitioner's determination not to raise this issue is on firm ground and was undoubtedly well considered. Certainly petitioner's potential *amici* do not now challenge that judgment. In any event, the "taking" issue, not having been raised by petitioner, is not properly before this Court. *Teamsters v. United States*, 431 U.S. 324, 374 (1977).

Even had petitioner itself attempted to raise this new issue, which it has not, this Court would refuse to consider it. This Court so held in *Irvine v. California*, 347 U.S. 128, 129-130 (1954) as follows:

> "We granted certiorari on a petition which tendered four questions. However, petitioner's counsel has now presented two additional questions[.] . . . Neither of these was mentioned in the petition. We disapprove the practice of smuggling additional questions into a case after we grant certiorari. The issues here are fixed by the petition unless we limit the grant, as frequently we do to avoid settled, frivolous or state law questions. We do not take up the questions numbered 3 and 6 of petitioner's brief because they are improperly presented." *Id.* (Footnote omitted.)

An attempt by non-parties to smuggle in additional questions after certiorari is granted is an *a fortiori* case for denial of

their request to do so. As this Court stated in *Andrews v. Louisville & Nashville R. Co.*, 406 U.S. 320, 325 (1972), "We do not reach for constitutional questions not raised by the parties."

Thus, respondent State requests that this Court apply its established case law as well as its Rules 21.1(a), 34.1(a), and 36.5,[2] all of which preclude an *amicus curiae* brief from raising additional issues not contained in the petition for certiorari, to the motions now before the Court. *F.D. Rich Co. v. Industrial Lumber Co.*, 417 U.S. 116, 121 (1974); *J. I. Case Co. v. Borak*, 377 U.S. 426, 428-429 (1964).

Conclusion.

Since the *amicus curiae* brief proposed for filing by PLF is entirely devoted to a point not raised by the petition for certiorari, and thus is not subject to consideration by this Court, it is requested that leave to file said brief be denied.

Moreover, since the *amicus curiae* brief which CLTA proposes to file devotes half of its argument to the same ground, review of which was not sought in the petition for

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[2]Rules 21.1(a), 34.1(a) and 36.5 of the Rules of the Supreme Court provide in pertinent part as follows:

"21.1. The petition for writ of certiorari shall contain, in the order here indicated:

"(a) The questions presented for review[.] . . . Only the questions set forth in the petition or fairly included therein will be considered by the Court."

"34.1. A brief of an appellant or petitioner on the merits shall comply in all respects with Rule 33, and shall contain in the order here indicated:

"(a) The questions presented for review[.] . . . The phrasing of the questions presented need not be identical with that set forth in the jurisdictional statement or the petition for certiorari, but the brief may not raise additional questions or change the substance of the questions already presented in those documents. . . ."

"36.5 All briefs, motions, and responses filed under this Rule [Brief of an Amicus Curiae] shall comply with the applicable provisions of Rules 33, 34, and 42[.] . . ."

certiorari and upon which this Court will not pass, it is requested that should this Court not deny its motion, that pages 20 to 29 be stricken.

DATED: June 14, 1983.

Respectfully submitted,

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